

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

TRANSFER & DISCHARGE RIGHTS III: INFO FOR LTC OMBUDSMEN FACT SHEET

The threat of transfer or discharge from a nursing home can be dangerous, stressful, and overwhelming for residents and their families. Our fact sheets, *Transfer & Discharge Rights I* and *Transfer & Discharge Rights II*, offer information on resident rights, including protections against facility-initiated discharges, notice requirements, and more.

Given the critical role ombudsmen play in protecting residents and helping them and their families, federal rules and guidelines address the special role of the LTC Ombudsman Program in cases of transfer or discharge. **This fact sheet focuses on the rules and guidance relevant to ombudsmen and the role they have in ensuring that facilities follow transfer & discharge requirements.** For the complete federal guidance on transfer and discharge rights, visit nursinghome411.org/discharge.

Notes: The brackets below provide, for reference, the citation to the federal requirement (42 CFR 483.xx) and the F-tag number used when a facility is cited for failing to meet the requirement. Emphases (bold) have been added by LTCCC.

I. Notice Before Transfer [42 CFR 483.15(c)(3); F-628]

Before a facility transfers a resident, it must provide:

- a. Written notice to the resident and his/her representative in language and manner that they can understand;
- b. Notice must be given at least 30 days in advance. (With very limited exceptions, such as when a resident cannot be cared for safely or is a danger to others, in which case “notice shall be given as soon as practicable before transfer or discharge” and the facility must document the danger that failure to transfer/discharge would impose.)
- c. *The facility must send a copy of the notice to... the State Long-Term Care Ombudsman.*

Except in an emergency situation...

1. The discharge notice must be sent to the LTCOP at the same time it is provided to the resident.
2. Notices must be given at least 30 days in advance.

Important Notes:

1. Previously, facilities were only required to send notice to the LTCOP when a discharge was “facility initiated.” Now, **all discharge notices must be sent to the LTCOP.** This is important because, too often, facilities inaccurately identify facility-initiated discharges as resident-initiated in order to avoid these important reporting requirements.
2. **Federal Guidance states:** *The intent of sending copies of the notice to a representative of the Office of the State LTC Ombudsman is to provide added protection to residents from being inappropriately transferred or discharged, provide residents with access to an advocate who can inform them of their options and rights, and to ensure that the Office of the State LTC Ombudsman is aware of facility practices and activities related to transfers and discharges.*

The facility must maintain evidence that the notice was sent to the Ombudsman. While Ombudsman Programs vary from state to state, facilities should know the process for

ombudsman notification in their state. In situations where the facility has decided to discharge the resident while the resident is still hospitalized, the facility must send a notice of discharge to the resident and resident representative before the discharge, and must also send a copy of the discharge notice to a representative of the Office of the State LTC Ombudsman.

Notice to the Office of the State LTC Ombudsman must occur at the same time the notice of discharge is provided to the resident and resident representative, even though, at the time of initial emergency transfer, sending a copy of the transfer notice to the ombudsman only needed to occur as soon as practicable. [Emphases added.]

II. Discharge Planning [42 CFR 483.21(c)(1); F-627]

Discharge planning must include procedures for “[d]ocumentation of referrals to local contact agencies, the local ombudsman, or other appropriate entities made for this purpose... [and] [d]ocumentation of the response to referrals.”

III. Investigative Procedure for State Surveyors

The following language from the federal Guidance is included to help Ombudsmen be aware of federal expectations for facilities and for the surveyors who are inspecting them.

*Investigating noncompliance with the transfer and discharge requirements begins when conducting offsite preparation. **The team coordinator (TC) should contact the local ombudsman and inquire if there are specific residents from whom the ombudsman has received complaints related to inappropriate discharges for review....***

Use Offsite Preparation information from the Ombudsman to identify residents or resident representatives (for residents already discharged) who may have concerns with inappropriate discharges. For any residents with concerns, briefly review the most recent comprehensive assessment, comprehensive care plan (specifically the discharge care plan), progress notes, and orders to:

- *Identify the basis for the transfer or discharge,*
- *Determine whether the facility has identified and addressed the resident’s goals and discharge needs;*
- *Determine if the resident was appropriately oriented, prepared, and understood the information provided to him or her.*

During this review, identify the extent to which the facility has developed and implemented interventions in accordance with the resident’s needs, goals for care and professional standards of practice. This information will guide observations and interviews to be made in order to corroborate concerns identified.

Emergency Transfers--When a resident is temporarily transferred on an emergency basis to an acute care facility a notice of transfer must be provided to the resident and resident representative as soon as practicable before the transfer, according to 42 CFR §483.15(c)(4)(ii)(D). ***Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis, as long as the list meets all requirements for content of such notices at §483.15(c)(5).***